UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SANDRA NEAL, on behalf of her minor child R.B.,

Plaintiff,

v.

CHRISTINE O. GREGOIRE, Governor of the State of Washington; DR. TERRY BERGESON, Superintendent of Public Instructions; JAMES F. SHOEMAKE, Superintendent Tacoma School District #10,

Defendants.

Case No. C06-5138 RJB

ORDER DIRECTING PLAINTIFF TO SHOW CAUSE

This matter comes before the Court *sue sponte* on review of the case file. It appears that Plaintiff Sandra Neal has filed this action as a *pro se* litigant on behalf of her minor child, without representation by a lawyer, which is not permitted in federal court. *See Johns v. County of San Diego*, 114 F.3d 874 (9th Cir. 1997). Moreover, Plaintiff Neal's minor child has not had a *Guardian ad Litem* appointed to represent his or her interests in this matter, which is required by Fed. R. Civ. Pro. 17(c). Therefore, Plaintiff Neal should be ordered to show cause, within 21 days of this order, why this case should not be dismissed for failure to comply with the above rules.

FACTUAL AND PROCEDURAL HISTORY

This dispute arose from the State of Washington's requirement that high school students pass the Washington Assessment of Student Learning (WASL) exam prior to graduation. On March 15,

2006, Plaintiff Neal filed a Complaint in federal court, alleging that the WASL exam unfairly discriminates against low income and minority students, and is therefore unconstitutional pursuant to Title VI of the 1964 Civil Rights Act as amended, as well as other sections of the United States Constitution. Dkt. 1-1, at 2-8. Plaintiff requests (1) a declaratory judgement that Defendants have violated Title VI of the 1964 Civil Rights Act and/or other rights guaranteed by the United States Constitution, (2) an injunction preventing Defendants from further administering the WASL, (3) an order requiring Defendants to provide "necessary funding and effective curriculum" in order to train Plaintiff's minor child to take the WASL exam, and (4) damages in the amount of $250,000.00 for further remedial training and emotional distress. *Id.* at 7-8. On April 5, 2006, Defendants Gregoire and Bergeson filed their Answer, denying all allegations. Dkt. 17.

Plaintiff Neal has filed this action as a *pro se* litigant on behalf of her minor child without retaining a lawyer. Moreover, Plaintiff Neal's minor child does not have a *Guardian ad Litem* in this matter. As explained below, both of these conditions must be remedied before this action can proceed. If Plaintiff Neal is also intending to sue on her own behalf, that is not made clear in her pleadings.

DISCUSSION

A. A PRO SE LITIGANT CANNOT BRING SUIT ON BEHALF OF HER MINOR CHILD

Under Article III of the United States Constitution, a federal court cannot consider the merits of a legal claim unless the person seeking to invoke the jurisdiction of the court establishes the requisite standing to sue. *Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990). A litigant demonstrates standing by showing that he or she has suffered an injury that can be traced to the challenged action, which can be redressed by a favorable judicial decision. *Steel Company v. Citizens for a Better Environment*, 523 U.S. 83, 103 (1998).

Although a non-attorney may appear *pro se* on behalf of himself, he has no authority to appear as an attorney for others. *C.E. Pope Equity Trust v. United States*, 818 F.2d. 696, 697 (9th Cir. 1987); *Johns v. County of San Diego*, 114 F.3d at 876. Even a parent or guardian appointed as *Guardian ad Litem* cannot bring an action on behalf of a minor child without being represented by a

lawyer. *Johns v. County of San Diego*, 114 F.3d at 874. The Ninth Circuit explained the rationale behind this rule:

> A litigant in federal court has a right to act as his or her own counsel. ... However, we agree with *Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir. 1986) (per curiam), that a non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child. The choice to appear pro se is not a true choice for minors who under state law, see Fed. R. Civ. P. 1(b), cannot determine their own legal actions. There is thus no individual choice to proceed pro se for courts to respect, and the sole policy at stake concerns the exclusion of non-licensed persons to appear as attorneys on behalf of others.
>
> It goes without saying that it is not in the interest of minors or incompetents that they be represented by non-attorneys. Where they have claims that require adjudication, they are entitled to trained legal assistance so their rights may be protected.

Id. at 876 (quoting *Osei-Afriyie v. Medical College*, 937 F.2d 876, 882-83 (3rd Cir. 1991)).

Simply stated, when a parent seeks to sue on behalf of his or her child, as in this case, the child must be represented by a licensed attorney. Therefore, Plaintiff Neal has fourteen days from the issuance of this Order to show cause why this case should not be dismissed for failure to obtain proper legal representation for her minor child. The Court suggests that the most obvious solution is for Ms. Neal to seek an attorney for her minor child, and have the attorney file a notice of appearance and an appropriate response to this Order.

B. A MINOR CHILD REQUIRES A GUARDIAN AD LITEM

A district court has the authority to appoint a *Guardian ad Litem* at any time during the proceedings. *See* Fed. R. Civ. P. 17(c); *United States v. 30.6 Acres of Land*, 795 F.2d 796, 805 (district court may appoint a *Guardian ad Litem* "if it should appear during the course of the proceedings that a party may be suffering from a condition that materially affects his ability to represent himself"). Because this action has been brought on behalf of a minor child, the Court requires the appointment of a *Guardian ad Litem* to protect the child's interests. In order for an appropriately-qualified person to be appointed *Guardian ad Litem*, he or she must file a proper motion with the Court.

ORDER

Plaintiffs acting pro se are responsible for following orders issued by the Court. Failure to respond to this Order may result in this case being dismissed without further notice.

Therefore, it is hereby

ORDERED that Plaintiff Sandra Neal may show cause in writing, if any she has, why this case should not be dismissed for (1) failure to obtain appropriate legal counsel for her minor child and (2) failure to obtain a *Guardian ad Litem* for her minor child. Any response to this Order to Show Cause must be filed in writing on or before May 17, 2006. Alternatively, Plaintiff will be deemed to have adequately responded to this Order if a lawyer appears for Plaintiff minor, and a motion to appoint a *Guardian ad Litem* is filed by May 17, 2006. If a response or such documents are not so filed, all claims filed by Plaintiff in this matter may be dismissed without further notice.

The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

DATED this 26th day of April, 2006.

Robert J. Bryan
United States District Judge